

Infiltrator, Inc. and its workers' compensation insurance carrier, Twin City Fire Insurance Co. (referred to jointly as "Infiltrator" hereafter), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to M. S. H. under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. § 63-46b-12, Utah Code Ann. § 34A-3-102 and Utah Code Ann. § 34A-2-801(3).

### **BACKGROUND AND ISSUES PRESENTED**

Mr. H. filed an application for hearing with the Commission on January 21, 2003, to compel Infiltrator to pay workers' compensation benefits for "eczematous dermatitis" caused by his work at Infiltrator. Judge La Jeunesse held an evidentiary hearing on Mr. H.'s claim on September 4, 2003, and then referred the medical aspects of the claim to a medical panel. After receiving and adopting the panel's report, Judge La Jeunesse issued his decision on December 30, 2004, awarding temporary total disability compensation, permanent partial disability compensation and medical benefits to Mr. H..

Infiltrator's motion for review challenges Judge La Jeunesse's award of permanent partial disability compensation to Mr. H.. Infiltrator contends that the medical panel's report, on which Judge La Jeunesse relied, was insufficient and incorrect.

### **FINDINGS OF FACT**

The Appeals Board affirms Judge La Jeunesse's findings of fact. As material to the issues raised by Infiltrator's motion for review, the facts can be summarized as follows.

Until he began work for Infiltrator, Mr. H. had no episodes of dermatitis. Mr. H.'s work duties at Infiltrator exposed him to plastic dust, oils, hydraulic fluids and formaldehyde. Within a few months, he developed rashes on his hands and lower arms. These rashes grew worse, ultimately resulting in blisters, bleeding, loss of fingernails and some loss of dexterity. At the advice of his physician, Mr. H. stopped working at Infiltrator on May 24, 2002.

Dr. Powell and Dr. Anderson, Mr. H.'s treating physicians, concluded that Mr. H.'s dermatitis was caused by his work at Infiltrator. Dr. Powell also concluded that Mr. H. had suffered a permanent 50% whole person impairment from his skin condition.

Dr. Holmes, who examined Mr. H. on behalf of Infiltrator, expressed doubt that the work at Infiltrator was the cause of Mr. H.'s condition.

To resolve the foregoing difference of medical opinion, Judge La Jeunesse appointed a medical panel to consider the medical aspects of Mr. H.'s claim. The panel concurred with Dr. Powell and Dr. Anderson that Mr. H.'s work at Infiltrator was the sole cause of his dermatitis.

On the basis of the foregoing medical opinions, Judge La Jeunesse found that Mr. H.'s

dermatitis was entirely caused by his work at Infiltrator and that Mr. H. had suffered a 50% whole person impairment from that disease. Judge La Jeunesse ordered Infiltrator to pay permanent partial disability compensation, as well as other benefits.

### **DISCUSSION AND CONCLUSIONS OF LAW**

In challenging Judge La Jeunesse's award of permanent partial disability compensation to Mr. H., Infiltrator argues Judge La Jeunesse's decision is incorrect in its statement that Dr. Powell's assessment of Mr. H.'s permanent impairment was unchallenged by any other medical opinion. Specifically, Infiltrator refers to Dr. Holmes' opinion that neither Mr. H.'s underlying condition nor his permanent impairment were caused by his work at Infiltrator.

While it is true that Dr. Holmes did not determine the extent of Mr. H.'s permanent impairment and did not attribute any such impairment to Mr. H.'s work at Infiltrator, other medical experts who have considered this question disagree with Dr. Holmes. The Appeals Board finds these other opinions to be persuasive and, therefore, concurs with Judge La Jeunesse's award of permanent partial disability compensation to Mr. H.. The Appeals Board notes that Infiltrator did not object to the questions posed to the medical panel by the ALJ, nor did Infiltrator challenge the panel's report for lack of an impairment rating. Instead, Infiltrator only objected to the panel's conclusions regarding causation.

Next, Infiltrator argues that Judge La Jeunesse's charge to the medical panel failed to include questions mandated by § 34A-2-601(2)(c) of the Workers' Compensation Act. The Appeals Board notes that on February 5, 2004, Judge La Jeunesse provided Infiltrator with the specific questions he intended to ask the medical panel. Judge La Jeunesse also allowed Infiltrator 15 days to object to the questions. Infiltrator made no such objection. On that basis, the Appeals Board concludes Infiltrator has waived its objections to the medical panel questions. But even if the Appeals Board were to consider the substance of Judge La Jeunesse's questions and the medical panel's answers, the Board would find such questions and answers to substantially comply with the requirements of § 34A-2-601(2)(c).

Infiltrator also challenges the soundness of the panel's medical reasoning with respect to the causation of Mr. H.'s dermatitis as well as Dr. Powell's assessment of the extent of Mr. H.'s permanent impairment. Essentially, these arguments are matters of medical opinion. As already noted above, the Appeals Board finds the opinions of the medical panel, Dr. Anderson and Dr. Powell to be persuasive.

### **ORDER**

The Appeals Board affirms Judge La Jeunesse's decision and denies Infiltrator's motion for review. It is so ordered.

Dated this 9<sup>th</sup> day of June, 2005.

Colleen S. Colton, Chair  
Patricia S. Drawe  
Joseph E. Hatch